

## **REMARKS**

Claims 1-2, 4-8 and 10-16 remain in the application. Independent claims 1 and 11 have been amended to remove the limitations of wherein the metal gate does not substantially diffuse into the high k gate dielectric layer. New claim 25 has been added. Support for this amendment can be found in paragraph 21, for example. No new subject matter has been added with these amendments.

### **A. 35 U.S.C. § 103(a)**

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claims 1-2, 4-8, and 10-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chau (6,890,807) in combination with other references. In response, applicants respectfully point out that Chau cannot support a 103(a) rejection according to 35 U.S.C. 103(c), because Chau and the present application have both been assigned to Intel Corporation (MPEP 2146). Accordingly, Applicants respectfully request that the 103(a) rejections of claims 1-2, 4-8 and 10-16 be withdrawn.

In view of the foregoing remarks, the Applicants request allowance of the application.

Please forward further communications to the address of record. If the Examiner needs to contact the below-signed Attorney to further the prosecution of the application, the contact number is (480) 715-5488.

Respectfully submitted,

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